

## REMARKS

Claims 1-10, 12, 13, 15-24, 26, 27, 29-39, 41, 42, 44-54, 56, 57, and 59-64 are pending in the present application. By this Response, independent claims 1, 16, 26, 30 and 45 are amended to remove the definition of a transaction “representing an interaction between a user of a client computing device and one or more applications running on a server computing device, which together are treated as a single unit” which was added in the previously filed Amendment. These claims are further amended to recite that the data collection is performed with regard to each transaction step and is a measurement of the performance of the transaction step. These claims are also amended to recite that each entry in the report has associated performance data collected for a corresponding transaction step. Support for these amendments may be found at least in Figures 3A-3B, 4A-4B, and the corresponding description of these figures.

Claim 45 is further amended to recite an apparatus comprising a computer usable medium. Claims 46-54, 56-57, 59 and 64 are amended to be consistent with the amendments to claim 45. Support for these amendments may be found at least at page 4, lines 19-23 and page 21, lines 11-27.

Claims 60-64 are amended to positively recite configuring the report to comprise a table having at least one row for each execution of the script and columns ordered according to an order of transaction steps in the script. Support for these amendments may again be found at least in Figures 3A-3B, 4A-4B, and the corresponding description in the specification.

No new matter has been added by any of the above amendments. Reconsideration of the claims is respectfully requested in view of the above amendments and the following remarks.

### I. Telephone Interview

In the Request to Reopen Prosecution and Amendment filed July 27, 2010, Applicants respectfully requested an interview with the Examiner and his supervisor (see pages 16-17) however, such an interview was not conducted. Thus, again, Applicants are

requesting that the Examiner contact Applicants' undersigned representative prior to taking any further action on this application so that an interview with the Examiner and the Examiner's supervisor may be conducted to advance the prosecution of this application towards a final disposition.

## **II. Examiner's Response to Arguments**

At the beginning of the Office Action, the Examiner includes a "Response to Arguments" section explaining the Examiner's position with regard to the arguments presented in Applicants' Amendment filed July 27, 2010. The Examiner's response will be addressed herein below in conjunction with the arguments addressing the various basis for rejection.

## **III. Citation of References**

The Office Action states that the listing of references in the remarks of the previous Amendment is not a proper citation of references. Applicants respectfully submit that the inclusion of the dictionary definition in Applicants' remarks was not intended to be a formal citation of a reference but rather merely evidence of the knowledge of one of ordinary skill in the art in support of Applicants' argument. Thus, it is not necessary for the dictionary definition to be cited on a PTO-Form 1449 in order for the Examiner to consider the evidence of the level of knowledge of those of ordinary skill in the art.

## **IV. Objection to the Specification**

The Office Action objects to the specification stating that the material added to the disclosure, i.e. the definition of a transaction, is allegedly new matter. It should be noted that Applicants did not amend the specification in the Amendment filed July 27, 2010 but only amended the claims to include the features of stating that the transaction was a series of steps that are treated as a single unit. Thus, it is Applicants'

understanding that the Examiner is objecting to the amendments to the claims, which are part of the disclosure.

Applicants respectfully disagree with this objection since Applicants have provided evidence in support of the features added to the claims both in the present specification and through outside sources that identify the knowledge of those of ordinary skill in the art. The Office Action's position that external art cannot be used to provide support for claim amendments is contrary to established law. The external art is used as a basis for establishing the level of knowledge of one of ordinary skill in the art with regard to what the term "transaction" means to those of ordinary skill in the art. The Office Action's position completely disregards the level of one of ordinary skill in the art when interpreting the terms set forth in the specification and the claims and instead imposes a requirement that every term be explicitly defined in the specification regardless of whether that term has an established meaning in the art, as evidenced by the definition proffered by Applicants. Applicants have not provided an explicit definition of what a "ROM" is as depicted in Figure 1, yet those of ordinary skill in the art would understand what a ROM is even absent a formal definition in the specification. The same is true of the term "transaction" since this term has an accepted meaning in the art as Applicants have shown.

Regardless, in order to expedite prosecution of this application and reduce issues, the definition of the transaction with regard to the transaction being treated as a single unit has been removed from the claims by this Response. Therefore, the Office Action's objection to the specification is rendered moot. This amendment to remove the text added to the claims in the previous Amendment is not an admission that this text constitutes new matter, since Applicants clearly do not believe this text to be new matter as discussed above. To the contrary, this amendment is solely to reduce issues and further prosecution of the application. Accordingly, Applicants respectfully request withdrawal of the objection to the specification.

**V. Rejection under 35 U.S.C. 112, First Paragraph**

The Office Action rejects claims 1-10, 12-13, 15-24, 26-27, 29-39, 41-42, 44-54, 56-57, and 59-64 under 35 U.S.C. § 112, first paragraph stating that the specification does not provide adequate support for the amendments made to the independent claims in the previously filed Amendment. Applicants respectfully disagree for the reasons set forth above with regard to the objection to the specification. However, in order to reduce issues and advance prosecution, the amendments made to the independent claims with regard to defining the term “transaction” have been deleted from the independent claims by this Response.

In addition, the Office Action alleges, with regard to claim 45, that the term “computer program product” is not present in the specification and thus, the amendments to include this term in claim 45 is allegedly not supported. Applicants respectfully disagree that this term is not supported by the specification since the specification clearly describes that the invention may be embodied as instructions stored on a media (see page 4, lines 10-20 and page 21, lines 11-27 of the present specification, for example). As recited in the claims, the computer program product comprises a computer readable storage device and instructions stored on this computer readable storage device. Thus, while the term “computer program product” may not be explicitly utilized in the specification, there is ample support for this term in the specification by virtue of the description describing an embodiment of the invention comprising a computer readable storage medium having instructions stored thereon at least on pages 4 and 21 of the present specification.

However, in an effort to further prosecution and reduce issues, claim 45 and its dependent claims are amended by this Response to recite an apparatus, the apparatus comprising a computer usable medium having the various instructions stored thereon. Thus, the terms in the claims that were the basis of the rejection have been removed by this Response.

In view of the above, Applicants respectfully request withdrawal of the rejection of claims 1-10, 12-13, 15-24, 26-27, 29-39, 41-42, 44-54, 56-57, and 59-64 under 35 U.S.C. § 112, first paragraph.

## **VI. Rejection under 35 U.S.C. 101**

The Office Action rejects claims 45-54, 56, 57, and 59 under 35 U.S.C. § 101 alleging that the claims are directed to non-statutory subject matter since the claims recite a computer readable storage medium and this term is not explicitly found in the specification. The Office Action further points out that the specification on page 4 states that the computer-usable medium may include carrier wave, signal, or transmission facilities.

By this Response, the specification is amended to remove the recitation of carrier waves, signal, or transmission facilities from the definition of a “computer usable medium.” Thus, the definition of the computer usable medium now encompasses only other types of media, not including carrier waves, signal, or transmission facilities. As a result, the term “computer usable medium” as it is used in the specification and claims encompasses only statutory types of media.

Moreover, claims 45-54, 56, 57, and 59 have been amended to recite an apparatus comprising a computer usable medium. Thus, claims 45-54, 56, 57, and 59 are directed to a statutory class of invention and encompass only statutory types of media due to the definition of the term “computer usable medium” in the present specification. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 45-54, 56, 57, and 59 under 35 U.S.C. § 101.

## **VII. Rejection under 35 U.S.C. § 103(a) based on Hershey and Chandra**

The Office Action rejects claims 1, 3-7, 9, 12, 16, 17, 19-21, 23, 26, 29, 30, 32-36, 38, 41, 45, 47-51, 53, and 56 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey et al. (U.S. Patent No. 5,793,753) in view of Chandra et al. (U.S. Patent No. 6,397,359). This rejection is respectfully traversed.

## A. Applicants' Argument

Claim 1, which is representative of the other rejected independent claims 30 and 45 with regard to similarly recited subject matter, reads as follows:

1. A method for communicating performance information, said method comprising:

configuring a plurality of probes to execute *a script for performing a transaction* between a client computing device and a server computing device, wherein the script comprises *a plurality of transaction steps for performing the transaction, and wherein the transaction is a sequence of the plurality of transaction steps;*

collecting data, *for the plurality of transaction steps*, from the plurality of probes, including at least one local probe and at least one remote probe, *wherein the collected data for each transaction step is data that is a measurement of a performance of the transaction step of the script executed by at least one probe of the plurality of probes*; and

reporting said data, wherein reporting said data comprises generating *a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, and wherein each entry has associated performance data collected, for a corresponding transaction step, by one or more of the at least one local probe or the at least one remote probe.* (emphasis added)

Neither Hershey nor Chandra, either alone or in combination, teach or suggest the features of claim 1 emphasized above. Hershey is directed to a system for management of a telecommunications network. Hershey teaches the use of a programmable probe that is connected to a network device for monitoring data transfer activity on the network and collecting selected data relating to one or more relevant functions. The probe may be programmed to effect collection of data relative to a selected function parameter. The collected function parameter data may be received from the probe and stored. A data output device may be provided for outputting the parameter data to a user. Furthermore, Hershey teaches comparing the parameter data to a reference value and providing an indication when the parameter data deviates from the reference value by more than a preselected threshold (column 2, lines 11-55).

Hershey, however, does not teach configuring a probe with a script for performing a transaction between a client device and a server device, wherein the script includes a

plurality of transaction steps. To the contrary, Hershey only teaches being able to program the probe to collect data for particular functions. Hershey does not provide any script for performing a transaction between a client device and a server that includes a plurality of transaction steps. Thus, Hershey also does not teach collecting data that is a measurement of a performance of the transaction steps of the script.

Moreover, Hershey does not teach reporting the collected data, wherein reporting the collected data comprises generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, wherein each entry has associated performance data collected, for a corresponding transaction step, by one or more of the at least one local probe or the at least one remote probe. While Hershey states that parameter data may be output to the user via an output device, Hershey provides no details as to how such an output is provided. Specifically, Hershey does not teach that such an output comprises a report having a plurality of transaction step entries, one entry for each transaction step of a script that is executed by the probes, and the entries having associated performance data collected from the one or more of the probes. The Office Action admits that Hershey does not teach these features. However, the Office Action alleges that these features are taught by Chandra. Applicants respectfully disagree.

Chandra is directed to a mechanism for scheduled measurement of connections between end nodes. The end nodes are provided with test protocols that have test scripts. These test scripts are used to measure the performance of the connection between the end nodes without requiring any involvement of application software which may or may not be present on the end nodes (column 3, lines 16-50). The system of Chandra may make measurements of the connection performance at scheduled times and may store this information until a request for a report is received, or an automatic scheduled report is performed. The reports are provided to a console node which generates statistics for the connection based on the measured performance.

Chandra is not concerned with measuring the performance of *transactional steps* of a script but rather merely the performance of the connection as a whole and thus, since Chandra does not teach such a measurement, Chandra cannot teach or suggest collection of data for each transaction step where the data is a measurement of a performance of the

transaction step. Thus, Chandra does not teach or even suggest to collect data that is a measure of the performance of the individual transactional steps of a script, nor does Chandra teach or suggest providing a report having entries for each of these individual transactional steps as recited in claim 1.

The only mention of “transactions” in Chandra is in the Background of the Invention section where Chandra discusses a known system management tool (see column 1, lines 54-66). As discussed in this Background section of Chandra, one known system management tool involves actively emulating application transactions. Agents at the end user locations monitor actual sample application transactions to measure performance of the application operating over the network environment. While Chandra teaches that such system management tools exist, Chandra takes an opposite approach by concerning itself with only the measurements of the connections between end nodes without requiring any involvement of application software which may or may not be present on the end nodes (see column 3, lines 20-23, “...without requiring any involvement of application software...”, and column 3, lines 39-41, “...without regard to the end user application programs available at particular endpoints...”). While the Background in Chandra mentions using synthetic transactions to monitor performance of applications, the monitoring is done on a transaction level. There is no mention in Chandra of monitoring the performance of individual steps in the transactions or providing a report having entries for each transaction step of a transaction in a script.

Moreover, other than the above mentioned portion of the Background section in Chandra, the only other mention of transactions in Chandra is that the performance measure may include transaction rates. Thus, yet again, the performance measure is at a transaction level rather than at a level corresponding to individual transaction steps of a transaction. Hence, even if Chandra does perform measurements of connection performance with regard to transactions, the measurements are not done with regard to individual transaction steps such that a report having entries for each transaction step of a transaction in a script could be provided. Thus, contrary to the allegations raised by the Office Action, Chandra actually does not teach or even suggest to measure performance of transactional steps but instead to only measure the performance of a connection

between end nodes, which at most may be performed on a transaction basis, not individual transaction steps.

The Office Action alleges that Chandra teaches the collection of data for reporting at column 8, lines 22-35, column 13, lines 10-11, column 16, line 20 to column 18, line 35, and column 3, lines 45-47. Column 8, lines 22-35 of Chandra teaches that the endpoint node pairs generate timing records and calculate performance test results from these timing records and provide these performance test results to a console node. The console node may then analyze the performance test results. Column 13, lines 10-11 of Chandra teaches that the results may be stored until an appropriate time for a batch or event driven reporting of results to the control node.

Column 16, line 20 to column 18, line 35 provides a number of tables describing connection analysis results and periodic report results. It is important to note that nowhere in these tables is there anything regarding providing a report that has entries for each transaction step of a transaction in a script. To the contrary, the only mention of transactions in these tables is the transaction count which is a count of a number of transactions. There are no entries in any of the “results” tables of Chandra regarding individual transaction steps of a transaction in a script.

Column 3, lines 45-47 of Chandra teaches that network test results may encompass an end-to-end view and may further break network performance analysis down into its components, such as client, server, application, and network time, to potentially quickly and accurately isolate problems. While this section talks about breaking down results into various parts of the network, i.e. client, server, application, etc., there is no teaching or even suggestion in this portion of Chandra regarding providing a report having entries for each of the transaction steps of a transaction in a script.

Thus, neither Hershey nor Chandra, either alone or in combination, teach or suggest that collected data, for each transaction step, is data that is a measurement of a performance of the transaction step of the script executed by at least one probe of the plurality of probes. Moreover, neither Hershey nor Chandra, either alone or in combination, teach or suggest reporting the data by generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script,

wherein each entry has associated performance data collected, for a corresponding transaction step, by one or more of the at least one local probe or the at least one remote probe. Therefore, even if Hershey were combinable with Chandra, and one were somehow motivated to attempt such a combination, *arguendo*, the result of the combination still would not result in these features of independent claims 1, 30 and 45 being taught or suggested.

Regarding independent claims 16 and 26, these claims recite similar features to that emphasized above. For example, claim 16 recites:

16. A method for communicating performance information, said method comprising:

configuring at least one probe to execute *a script for performing a transaction* between a client computing device and a server computing device, *wherein the script comprises a plurality of transaction steps for performing the transaction, and wherein the transaction is a sequence of the plurality of transaction steps*;

receiving data, *for the plurality of transaction steps*, from the at least one probe, wherein the received data for each transaction step is that is a measurement of *a performance of the transaction step of the script* executed by the at least one probe;

comparing said data with at least one threshold value derived from a service level agreement; and

reporting results of said comparing, wherein the reported results comprise *a plurality of transaction step entries, one entry for each transaction step of the script, and wherein each entry has associated performance data collected, for a corresponding transaction step, from the at least one probe*. (emphasis added)

Claim 26 recites similar features. Thus, claims 16 and 26 are distinguished over the Hershey and Chandra references for similar reasons as set forth above with regard to independent claims 1, 30, and 45.

At least by virtue of their dependency on claims 1, 16, 26, 30, and 45, respectively, neither Hershey nor Chandra, either alone or in combination, teach or suggest the features of dependent claims 3-7, 9, 12, 17, 19-21, 23, 29, 32-36, 38, 41, 47-51, 53, and 56.

## B. Examiner's Response and Applicants' Rebuttal

In response to the above arguments, the Examiner, in the Office Action alleges:

There is no limitation in the specification, let alone the claims, that requires the probe to monitor a single transaction step. The collecting step requires only that “the collected data is representative of a performance of the transaction steps of the script,” which certainly includes measuring the transaction in such a way that the transaction step performance can be later derived. As for the reporting step, it only requires a plurality of transaction step entries, and makes no limitation on how the entries are measured, calculated or derived.

(Office Action, pages 4-5, paragraph 9)

Applicants respectfully disagree with the Examiner's allegation since the claims clearly recited that there is an entry for each transaction step and that the plurality of transaction step entries each have associated performance data collected from one or more of the at least one local probe or the at least one remote probe. Moreover, Figures 3A-3B and 4A-4B provide example embodiments in which performance measures for each individual entry corresponding to a transaction step, e.g., each column in these figures, are provided. The way in which these individual performance measures can be obtained using the mechanisms of the illustrative embodiments is to measure them using probes. One cannot simply look at a total performance measure and then deduce all the performance measures of each individual transaction step from the total performance measure. In other words, taking Chandra as an example, one cannot get a total measurement of 74 seconds and from that total measurement deduce that the transaction step “Open URL” took 4.906 seconds, the “Select Logon” transaction step took 1.953 seconds, etc.

However, in order to make this distinction over Chandra and Hershey clearer, Applicants have amended the claims to recite that the data is collected for each transaction step and that this data is a measurement of the performance of the transaction step. This is clearly supported by Figures 3A-3B, 4A-4B, and their corresponding descriptions in the present specification. Furthermore, the claims are amended to recite that each entry has associated performance data collected, for a corresponding transaction step, by one or more of the at least one local probe or the at least one remote probe.

Thus, it is clear that the performance data is for each individual transaction step and each entry has the performance data for its corresponding transaction step. As argued above, neither Chandra, Hershey, nor the alleged combination of these references teaches or renders such features obvious.

Moreover, the Office Action alleges that a connection, as recited in Chandra, may be considered the same as a transaction (see Office Action, page 5, paragraph 10). Even if this were so, as previously discussed in the arguments above, Chandra still does not teach or render obvious the collection of performance data for individual transaction steps, e.g., sub-steps within a connection. To the contrary, as discussed at length, Chandra is only concerned with total connections. There is no ability in Chandra to determine the performance data for individual transaction steps but only with regard to entire connections.

In addition to the above, the Office Action further alleges the following:

First, Chandra clearly shows that each connection may be broken into sub-steps and the claims are written such that the execution of a transaction and monitoring and reporting of that transaction is all that is needed. Further, the claims do not preclude a measurement by a node view rather than transaction step view. Second the cited portions show that measurements involving running normal connections wherein the measurements are broken up by task rather than connection (see also col. 10, line 50 - col. 11, line 40).

(Office Action, pages 5-6, paragraph 11)

As discussed above, the claims have been further clarified to more clearly recite that the performance measurements are performed with regard to each individual transaction step and that the reporting provides a report having entries with performance data corresponding to a corresponding transaction step. Thus, the allegations made by the Examiner that the claims do not preclude measurement by a node view rather than a transaction step view is rendered erroneous. The claims clearly require a transaction step view of the measurements contrary to the allegations made by the Examiner in the Office Action.

Moreover, the cited portions of Chandra do not in fact support any breaking up of the connection into sub-steps or tasks, contrary to the allegations made by the Examiner.

For example, the cited portion of column 10, line 50 to column 11, line 40 reads as follows:

Results collector agent 64 receives test results from endpoint nodes 14, 15, 16, 17, 18. The results may be timing records of a successful test or an indication that a test failed to run. Result collector agent 64 may be implemented as a plurality of threads executing on control node 20 to support inbound connections from a plurality of endpoint nodes 14, 15, 16, 17, 18. Different threads can be provided to support different network protocols for various endpoint nodes 14, 15, 16, 17, 18 such as APPC, SPX or TCP. Received results may be parsed and stored in object database 50. In addition, results collector agent 64 may provide for updating of results summaries in object database 50 if results from any connections are untimely received after the summaries for a given period have already been calculated. Different threads may be initiated to support each endpoint node 14, 15, 16, 17, 18 actively transferring results to console node 20. Results collector agent 64 can further provide means to detect errors in data transfers whether from a communication problem or because of errors encountered during the test itself.

In addition, if an endpoint node 14, 15, 16, 17, 18 reports a failure or threshold crossing results collector agent 64 may perform specified actions as appropriate for the reported error condition. Appropriate actions, as will be described later, include sending SNMP traps to other network applications through SNMP agent 54 or executing a command locally on console node 20. A separate threshold crossing thread is provided in results collector 64 to handle processing of input results indicating violation of any threshold criteria by a threshold crossing event.

Endpoint configuration agent 66 is responsible for delivering test schedules to endpoint nodes 14, 15, 16, 17, 18. Related functions may include computing and distributing schedules and updating schedules on a periodic basis. Furthermore, endpoint configuration agent 66 may be responsible for detecting and marking individual endpoint nodes 14, 15, 16, 17, 18 as being in an inoperative condition when an endpoint node 14, 15, 16, 17, 18 cannot be successfully contacted. For example, this may be done after iteratively trying to establish a connection between console node 20 and the endpoint node 14, 15, 16, 17, 18 using each available alternative communication protocol and device address without establishing a successful connection to the individual endpoint node 14, 15, 16, 17, 18. Endpoint configuration agent 66 may also monitor the status of various endpoint nodes 14, 15, 16, 17, 18 by computing a reporting period for each endpoint node 14, 15, 16, 17, 18 based on the test schedules and placing appropriate information in object database 50 to indicate to other agents when network performance test results should be

expected from particular endpoint nodes 14, 15, 16, 17, 18 and associated connections. Endpoint configuration agent 66 may further detect and report when an endpoint pair 22, 24 is invalid if an individual one of the endpoint pair 22, 24 reports in with an indication that it is unable to establish a connection with its established endpoint pair for a particular connection

There is no mention in this cited section of Chandra of any breaking down of a connection into sub-steps, let alone using a probe to measure performance of such individual sub-steps. This section of Chandra mentions multiple threads for supporting connections from multiple endpoints, different threads being used for different protocols, parsing results and storing them in a database, failures of endpoint nodes causing other actions to be performed, and the like, but there is simply no teaching in this, or any other, section of Chandra with regard to using a probe to measure performance of individual transaction steps, let alone the collection of data that is a measurement of the transaction steps and generating a report having an entry for each transaction step with each entry having performance data for the corresponding transaction step, as it is recited in claim 1.

Thus, Applicants respectfully submit that, even in view of the Examiner's remarks on pages 3-7 of the Office Action, there still is no teaching or technical rationale provided in either Hershey or Chandra, or the alleged combination of these references, that obviates Applicants' claimed invention. Accordingly, the rejection of the claims based on the alleged combination of Hershey and Chandra should be withdrawn.

### **VIII. Rejection under 35 U.S.C. § 103(a) based on Hershey, Chandra and Schwaller**

The Office Action rejects claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey and Chandra, and further in view of Schwaller et al. (U.S. Patent No. 6,901,442). This rejection is respectfully traversed.

Claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 are dependent claims that are dependent upon respective ones of independent claims 1, 30 and 45. Thus, at least by virtue of their dependency, these claims are not taught or

suggested by the alleged combination of Hershey and Chandra for the reasons set forth above in section I. Moreover, Schwaller does not provide for the deficiencies noted above with regard to Hershey and Chandra.

Schwaller is directed to a mechanism for filtering of network performance data. Nowhere in Schwaller is there any teaching or suggestion to configure a probe with a script that comprises a plurality of transaction steps for performing a transaction between a client device and a server device. Schwaller merely states that the data may be collected in response to active testing of the network or passive data collection (column 7, lines 55-65). Schwaller does not provide any teaching or even suggestion regarding a script such as that recited in independent claims 1, 30, and 45.

Furthermore, Schwaller does not teach or suggest a report such as that recited in claims 1, 30, and 45. Schwaller does show various outputs in Figures 9A-13. However, in none of these outputs is there any report such as that recited in claims 1, 30, and 45. That is, none of the outputs of Schwaller show a report that comprises a plurality of transaction step entries, one entry for each transaction step of a script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. To the contrary, the outputs generated by Schwaller may provide performance data for a plurality of applications (see Figure 9A of Schwaller), but there is no indication of any transaction steps of a script that is used to configure a probe in any of the outputs of Schwaller.

In fact, there is no ability in Schwaller to match any of the data output by Schwaller to transaction steps of a script used to configure a probe. Schwaller does provide an output of a distribution of response times for transactions (see Figure 10.C.1), however, there is no indication of the individual transaction steps for the transactions or the corresponding performance data for such transaction steps in any of the outputs provided by Schwaller, similar to Chandra discussed above. Thus, Schwaller, like Hershey and Chandra, does not teach or suggest the features of independent claims 1, 30, and 45. Since none of these references teach or suggest these features, any alleged combination of the references, even if such a combination were possible and one of ordinary skill in the art were somehow motivated to make such a combination, would not result in these features being taught or suggested.

In view of the above, Applicants respectfully submit that neither Hershey, Chandra, nor Schwaller, either alone or in combination, teach or suggest the features of independent claims 1, 30, and 45. At least by virtue of their dependency on claims 1, 30, and 45, respectively, neither Hershey, Chandra, nor Schwaller, either alone or in combination, teach or suggest the features of dependent claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 under 35 U.S.C. § 103(a).

**IX. Rejection under 35 U.S.C. § 103(a) based on Hershey, Chandra, Schwaller, and Wlaschin**

The Office Action rejects claims 60-64 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hershey, Chandra, Schwaller, and further in view of Wlaschin et al. (U.S. Patent no. 6,163,775). This rejection is respectfully traversed.

**A. Applicants' Argument**

Claims 60-64 are dependent from respective ones of independent claims 1, 30, and 45. The deficiencies of Hershey, Chandra, and Schwaller with regard to claims 1, 30, and 45 have been discussed above. Wlaschin does not provide for these deficiencies. Wlaschin is cited as allegedly teaching using tables to report data. Wlaschin does not teach or suggest reports that have entries for a plurality of transaction steps of a transaction in a script that is provided to local and/or remote probes, as recited in claims 1, 30, and 45. Thus, even if Wlaschin were combinable with the other references, the addition of Wlaschin would not result in the features of the independent claims discussed above being taught or suggested.

In addition to the above, neither Hershey, Chandra, Schwaller, nor Wlaschin, either alone or in combination, teach or suggest the specific features recited in claims 60-64. Nowhere in any of the references is there any teaching to output a report to a user, the output of the report comprising a table having at least one row for each execution of

the script and columns ordered according to an order of transaction steps in the script. The Office Action alleges that Hershey teaches reporting results to a user, Chandra teaches a table report, and Wlaschin teaches a method and system of utilizing tables to report data. The Office Action alleges that the other differences between the claimed subject matter and the cited references is found only in “non-functional data stored on the article of manufacture” which does not distinguish the claimed invention from the prior art in terms of patentability.

Applicants respectfully submit that the configuration of the output generated by the present invention as recited in claims 60-64 does impart functionality and thus, is not merely non-functional descriptive material as alleged by the Examiner. With the output generated in the manner set forth in claims 60-64, a clearly ordered series of transaction steps corresponding to the order in the script is displayed along with their corresponding performance information. From such an output, a user may follow the order of transaction steps to determine where in the chain of steps a problem or performance degradation may have occurred and may take appropriate action. If a user determines that the total time for the script to execute is unsatisfactory, the user may traverse each of the transaction steps in order to determine where the greatest degradation in performance is felt and what that affect may have been on later transaction steps further down in the chain of transaction steps. Thus, the configuration of the output as recited in claims 60-64 does impart functionality and is an important feature of the claimed invention as recited in claims 60-64 that is not taught or even suggested by the cited references because none of the cited references teach or even suggest the monitoring of performance on a transactional step basis. To the contrary, none of the tables or even displays of the cited references show any individual entries for transaction steps of a script, let alone an ordered arrangement as set forth in claims 60-64. This is further evidence that the cited references do not, and are not capable of, generating a report that includes entries for each transaction step in a script.

To further emphasize the functionality of claims 60-64, these claims are amended by this Response to recite “configuring” the report in the manner recited in these claims. Thus, there is a positive recitation of an operation for generating the configuration recited in the claims. Hence, again, functionality is recited in these claims with the particular

configuring being performed to generate the particular configuration recited in these claims.

Thus, in addition to being dependent upon their respective independent claims, claims 60-64 recite additional features that are not taught or suggested by the alleged combination of references.

#### **B. Examiner's Response and Applicants' Rebuttal**

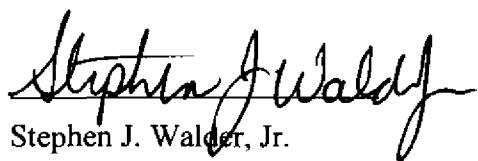
With regard to Applicants' arguments directed to claims 60-64, the Examiner maintains that the subject matter of claims 60-64 is non-functional descriptive material stating that the claims are not drawn towards a step of developing or ordering transaction steps, but of ordering data and that this is akin to a book conveying information. Applicants respectfully disagree for the reasons noted above. Moreover, claims 60-64 are amended herein to positively recite the operation of configuring the report which is an actual step of "ordering" or "developing" the report, i.e. "configuring" the report, to have a particular configuration which is neither taught nor rendered obvious by the alleged combination of references. Thus, claims 60-64 are not taught or rendered obvious and the rejection of these claims should be withdrawn.

**X.      Conclusion**

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: March 11, 2011



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